

Branden T. Clark,	)	
	)	
Petitioner,	)	Case No. 3:12-cv-02
	)	
-vs-	)	
	)	<b>ORDER ADOPTING REPORT AND</b>
Leann K. Bertsch,	)	<b>RECOMMENDATION</b>
	)	
Respondent.	)	

After considering the magistrate judge's Report and Recommendation, conducting a *de novo* review of Clark's objections, and reviewing the entire file, the Court hereby adopts the Report and recommendation in its entirety. For the reasons set forth therein, **IT IS HEREBY ORDERED** that Clark's petition for habeas relief (Doc. #1) be **DISMISSED WITHOUT PREJUDICE** and his motion for release from custody (Doc. #7) be **DENIED**.

Based upon the entire record before the Court, dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. See Tiedemann v. Benson, 122 F.3d 518, 252 (8th Cir. 1997) (finding that a district court possesses the authority to issue

certificates of appealability under Section 2253(c)). If Clark desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedemann, 122 F.3d at 250-52. The Court further finds any appeal taken by Clark would be frivolous and not be in good faith and, therefore, denies leave to proceed *in forma pauperis* on appeal.

**IT IS SO ORDERED.**

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated this 29th day of February, 2012.

/s/ Ralph R. Erickson  
Ralph R. Erickson, Chief Judge  
United States District Court